Supreme Court, U.S.
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NO.
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2000

EARLENE POLYAK — Petitioner

v

THE HONORABLE CHARLES BURSON; FRANK HULEN ESTATE; DORA LEE HULEN; WILMA LESNANSKY; THE HONORABLE JIM HAMILTON, CIRCUIT AND CHANCERY JUDGE; GERALD WILSON, CIRCUIT COURT CLERK; DALTON MOUNGER; AND GENEVA FRISBEE, CLERK AND MASTER; — Respondents

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On Petition for Writ of Certiorari
To The United States Court of Appeals
And The United States District Court
And The Courts of Tennessee
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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105pp

QUESTIONS PRESENTED

1.DOES THE COURT OF APPEALS SIXTH CIRCUIT'S DENIAL OF APPEAL AS A RIGHT RULE 3,FRAP ON RES JUDICATA OF DISTRICT COURT'S DISMISSALS ON RES JUDICATA WITHOUT CONSTITUTIONAL RIGHT OF JURY TRIAL ALLOW FOR STATE'S SEIZURE OF PROPERTIES AGAINST INTENTIONAL ARBITRARY DISCRIMINATION SECURED BY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT?

2.AND DOES THE STATE'S SEIZURE WITHOUT ANY JUST COMPENSATION VIOLATE THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS, AND ACTS OF CONGRESS IN 42 U.S.C. 1983?

3.DOES COURT OF APPEALS DENIAL OF APPEAL OF DISTRICT COURT DISMISSALS ON RES JUDICATA ALLOW FEDERAL COURTS TO ABSTAIN FROM JURISDICTION UNDER ARTICLE III OF THE CONSTITUTION?

4.DOES THE COURT OF APPEALS DENIALS ON RES JUDICATA CONFLICT WITH STATE COURT?

5.DOES THE COURT OF APPEALS SIXTH CIRCUIT SO FAR DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO CALL FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWER?

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IN THE
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EARLENE POLYAK — Petitioner

v

THE HONORABLE CHARLES BURSON et al., — Respondents

ON PETITION FOR WRIT OF CERTIORARI

Petitioner prays that a Writ of Certiorari issue from this Supreme Court to review the denial of Appeal as a Right by the Court of Appeals Sixth Circuit on res judicata,of dismissals of the District Court on res judicata without constitutional right of jury trial in violation of the Seventh,without due proces and any just compensation of Fifth,in violation of due process and equal treatment under the Fourteenth Amendment of the Constitution of the United States, and violation of enforcement of of laws for liability under 28.U.S.C. 1983,and Acts of Congress.

And review the need for Private Property Implementation Act H.R.2372 to become law to prevent Federal Courts from abstaining from Federal jurisdiction of constitutional rights.

OPINIONS BELOW

The opinions of the United States Court of Appeals Sixth Circuit are set forth in the Appendix A. The opinions of the United States District Court, Middle District of Tennessee are set forth in Appendix B. And the opinions of the Supreme Court, Court of Appeals, Chancery and Circuit Courts of Tennessee are set forth in Appendix C.

JURISDICTION

The jurisdiction of this Supreme Court is invoked in the order denying right of appeal on July 5, 2000 United States Court of Appeals No. 99-512, and 99-513 included in 99-509 in appeal of the dismissal without constitutional right of jury trial in United States District Court 1:98-0026.This petition for writ of certiorari is timely within ninety days.

This appeal as a right was filed in the District Court No. 1:98-0026 dismissal on res judicata on March 30, 1999 with one hundred five ($105.00) dollars, and one hundred five ($105.00) dollars on June 9, 1999.

The jurisdiction of this Supreme Court is invoked in complaint in District Court filed under original jurisdiction Article III, Sec. 2., which states that all judicial power shall extend to all cases of law and equity, between state and citizens of another state; and between citizens of different states.

The Honorable Charles Burson, Attorney General of Tennessee, nowPaul Summers, was served and the Honorable Don Sundquist,Governer of Tennessee was served.

The jurisdiction of the federal courts is exclusive in matters governed by the U.S. Constitution and Acts of Congress 304 U.S.

The jurisdiction of federal courts extend to action taking place in Tennessee, and over seventy-five thousand dollars.

This jurisdiction is further invoked in 28 U.S.C.1441; 28 U.S.C. 1443(1)(2) and 28 U.S.C. 2101; 42 U.S.C. 1981; 1982;and 1983; Civil Cights Acts 1964;1991; First; Fifth; Seventh and ourteenth Amendments, and 2403 may apply.

CONSTITUTIONAL PROVISIONS

The pertinent portions of the First Amendment is as follows:

> Congree shall pass no law...arbridging the freedom of speech, the right of the people to redress for grievances.

U.S. Const. Amend, 1

The pertinent portion of the Fifth Amendment provides:

> No...person shall be deprived of life, liberty or property without due process of law; nor shall any private property be taken for public use, without just compensation.

U.S. const. Amend.V

The pertinent provisions of the Seventh Amendment provides:

> ...where the matter in controversy shall exceed twent dollars, the right of jury trial shall be preserved.

The pertinent provision of the Fourteenth Amendment provides:

> No state shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any state deprive any person of life , liberty, or property.

U.S. Const. Amend. XIV.

28 U.S.C. 1443: Any of the following commenced in a state court may be removed by defendant

U.S. District Court.

(1) against any person who is denied or cannot enforce in the courts of such state law providing for equal civil rights of citizens of the United States.

(2) For any act under the color of authority deprived from any law providing the full and equal benefits of all laws.

28 U.S.C. 1981:

All persons within the jurisdiction of the United States shall have the same right to sue...to the full and equal benefits of the laws.

42 U.S.C. 1982:

All persons in the United States shall have right in every state ...to inherit purchase lease and convey real and personal property.

42 U.S.C. 1983:

Every person who under the color of any statute, ordinance, regulation, custon, or usuage of any state...subject any citizen or other person within its jurisdiction thereto the deprivation of of priveleges secured by the constitution and its laws shall be liable in equity or other proper proceeding.

28 U.S.C 2403:

In any action where the constitutionality of a state affecting public interest is drawn into question.

29-27-117 Partition in Kind TCA:

If exact partition cannot be made with

out material injury to the parties, or some one of them, the commissioners may make the partitions as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares.

STATEMENT OF THE CASE

The United States Court of Appeals for the Sixth Circuit continues to deny Appeal as a Right Rule 3, Federal Rules of Appellate Procedure, to new cause and new Complaint and Demand for Jury Trial, Non-consent to Magistrate, filed in United States District Court, Middle District of Tennessee No. 1:98-0026 for holding Petitioner's rights, investments,and interest in investments,without constitutional right of a jury trial for over fifteen (15) years and well into the new millennium in the Courts of Tennessee.

This new Complaint and Demand for Jury Trial, Non-consent to Magistrate No. 1:98-0026 was filed on February 12, 1998, and amended to add issues and parties first time on February 17, 1998, but first motin to amend was filed without issuing summons

The court of Appeals continues to deny Appeal as a Right Rule 3,FRAP on old Buford Evans & Sons v Earlene Polyak 92-5240, filed January 11, 1993, without constitutional right of a jury trial for relief in damages provided in the Seventh, without due process of any just compensation provided in the Fifth, and without due process and equal treatment under Partition in Kind 29-27-117 TCA 1932 provided in the Equal Protection Clause of the Fourteenth Amendment.

The first Appeal as a Right FRAP to the Magistrate Judge William B. Hayes Jr. Report and Recommendation No. 1:98-0026 issued on December 11, 1998, was filed to the Honorable Altea A. Trauger's order adopting report on May 4, 1999 with one hundred ($105.00)dollars (App. B. p. 26).

Judge Trauger issued second order overruling Petitioner's objections and Demand for oral argument to Report and Recommendation on June 9, 1999 second FRAP($105.00)(App. B.p.24).

The Court of Appeals filed first Appeal as a Right Rule FRAP No. 99-509(D.C.1:98-0026) as application for leave to appeal pursuant to Buford Evans & Sons v Earlene Polyak No. 99-5240 filed on January 11, 1993, denied 99-509 on June 22, 1999(App. A. p. 5).

The Petition for Rehearing 99-509(D.C. 1: 98-0026 was filed as application for leave to file pursuant to Buford Evans & Sons v Earlene Polyak, denied on October 15, 1999(App. A.p.4)

The second Appeal as a Right Rule 3 FRAP Court of Appeals Nos. 99-0512/0513(D.C.1:98-0026) delayed one (1) year from June,1999 to June 5, 2000 filed as application for leave to file pursuant to Buford Evans & Sons v Earlene Polyak No. 92-5240, with only letter dated July 5, 2000 with copy of denial June 5, 2000 (with extension of time to December 2, 2000) (App. A.p.2).

The Court of Appeals denied Petition for Writ of Mandamus pursuant to 28 U.S.C.1651(a) to the United States District Court 1:98-0026 for a jury trial for relief in injunctive and

compensatory and punitive damages Court of Appeals No.99-0502 filed as order filed on January 11, 1993, Buford Evans & Sons v Earlene Polyak 92-5240 on February 9, 1999 (App. A.p.8).

A petition for rehearing denial of No.99-0502 in order on February 9, 1999 was filed on 1993 order, Buford Evans & Sons v Earlene Polyak 92-5240 enjoining Petitioner from further Litigation in 1:98-0026 on March 5, 1999.(App. A.p. 5).

The Supreme Court returned valid request for injunction against sale 28 U.S.C. 2101(f) for relief requested from the United States Court of Appeals No.97-0508 denied on enjoin on January 11, 1993, Buford Evans & Sons v Earlene Polyak 92-5240 on March 12, 1998. (App. A. p. 11,12)

The Court of Appeals issued injunction against Petitioner"filing in Court of Appeals" No. 92-5240 Buford Evans & Sons v Earlene Polyak" or any other federal court in sixth circuit on January 11, 1993."(App. A.p.17,18).

The Chief Deputy Clerk, Court of Appeals Sixth Circuit denied Appeal as a Right Rule 3, FRAP to District Court No. 1:98-0026 in letter to Roger Milan, Clerk, Middle district of Tenn essee in denying action to transmittal packet from District Court on Case No. 92-5240 Buford Evans & Sons on January 9, 1997.(App.A.p.15).

The Chief Deputy Clerk wrote second letter alleging Petitioner filed successive petition for rehearing after she appealed empty letter without order received in No.99-509, but appeal should have been valid after Case Supervisor sent Judge's order.

The Complaint and Demand for Jury Trial, Non-consent to Magistrate, United States District Court No. 1:98-0026 for constitutional right of jury trial for relief in damages was filed against the Honorable Charles Burson, Attorney General of Tennessee, Frank Hulen Estate, Dora Lee Hulen and Wilma Lesnansky on February 12, 1998.

Complaint No. 1:98-0026 was amended to add orders and parties;The Honorable Jim

Hamilton, Circuit andChancery Judge; Gerald Wilson , Circuit Court Clerk; Dalton Mounger; and Geneva Frisbee, Clerk and Master on February 17, 1998 and removed from the Chancery and Circuit Courts of Lawrence County under 28 U.S.C. 1441.

On January 30, 1998, Dalton Mounger filed motion for hearing without due process of notification to Petitioner regarding her right to properties, and hearing was held on February 10, 1998 without her in Court.

District Court No. 1:98-0026 was amended to add Chancery 7951-96 Dismissal of Counterclaim; (App. C.p.53),7951-96 Judgment on the Pleadings(App. C.p. 54);Circuit Court CC:452-98 (Probate. No. 10497)(App. C.p.57, 59)and 7951-96 Order for Sale(App.C.p.55,56).

The above should not be confused with Dalton Mounger's Third Complaint to sell Rena Hulen Estate for Dora Lee Hulen and Wilma Lesnansky filed on May 10, 1996, removed to the United States District Court No.1:96-0112 when the Petitioner removed initial complaint 7951-

96 under 28 U.S.C. 1441. The dismissal of the counter-claim was appealed to the United States Court of appeals Sixth Circuit No. 97-508 filed January 17,1997, but held by the Clerk over one (1) year until denied on March 10, 1998, without due process of hearing March 12, 1998 and order issued same day while pend- counsel Mounger's action for sale at public auction (See Order App.A. p. 13).

This property was divided in settlement by agreement Partition in Kind 29-27-117 TCA, with Frank Hulen adding acreage back of house to his 150 acre farm,Wilma Lesnansky getting acreage to east of house for her son to build, and Petitioner got little old house and lot in front approximately ten (10) acres

Petitioner restored and maintained house for retirement home for over seven(7) years, and is in possession with electric, telephone and Property Taxes to this date.But she is not allowed whole and equal use and liberty to live in retirement home.

Defencdants Frank Hulen and Wilma Les-

nansky have not contributed any work, or money to the restoration and maintenance of property

This is the Third complaint and third lawyers retained by Defendants to sell Petitioner's rights investments and interests at public auction with Petitioner paying all cost.

Robert Boston son of William Boston, Boston Bates & Holt submitted second order for sale at public auction to Judge Hamilton in September, 1997. Counsel did not notify Petitioner time of sale, place of sale, or amount of proceeds, or enter order for right of appeal or right of redemption. Petitioner learned of add for sale from local resident in 1988.

William Boston, Boston Bates & Holt first lawyers who divided loyalties and sued their client since 1976, in violation of Tennessee Professional Code.

Petitioner filed complaints against Boston Bates & Holt, and Thomas Stack, Henry Henry & Stack for legal malpractice, and Buford Evans & Sons for entering on property and illegal survey without her knowledge or permission.

Petitioner filed motion to amend Complaint No. 1:98-0026 demanding return of $690.00 from Buford Evans owed by Frank Hulen and Wilma Lesnansky for illegal survey for auction.

Petitioner included second issue against Gerald Wilson Circuit Court Clerk for obstructing her from getting papers and coercing her to pay $690.00 for Evans et al to prevent the Lawrence County Sheriff from taking her car and putting disabled husband on crutches on the street and added these parties and issues to 1:98-0026 in violation of right to travel.

Petitioner complained to set aside any leins on her individual property for Robert Boston, William Boston Boston Bates & Holt and added these parties to 1:98-0026.

Petitioner counterclaimed Dalton Mounger for violation of fiduicary legal duties and legal malpractice in conducting hearings in violations of her Civil Rights.

The Court of Appeals of Tennessee does not find any res judicata,and reversed and remanded (App. C.p.68).

ARGUMENT

1. THE COURT OF APPEALS SIXTH CIRCUIT'S DENIAL OF APPEAL AS A RIGHT RULE 3,FRAP ON RES JUDICATA OF DISTRICT COURT'S DISMISSALS WITH OUT CONSTITUTIONAL RIGHT OF A JURY TRIAL ON RES JUDICATA VIOLATES THE SEVENTH, WITHOUT DUE PROCESS AND ANY JUST COMPENSATION PROVIDED IN THE FIFTH, ALLOWS FOR INTENTIONAL ARBITRARY DISCRIMINATION SECURED AGAINST THE STATE IN THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, AND THE CIVIL RIGHTS ACTS OF THE CONGRESS

The Court of appeals Sixth Circuit's denial of Appeal as a Right Rule 3, FRAP on res judicata of District Courts dismissals without constitutional right of a jury trial for relief in damages for holding rights investments, and interest in investments for over fifteen(15) years by State is violation of the Seventh Amendment, without due process and any just compensation in violation of the Fifth Amendment,and allows for intentional arbitrary discrimination secured against the State for every person in the equal protection clause of the Fourteenth Amendment, and the Civil Rights Acts of the Congress.

> The right of the people to petition for redress of grievances is guarantees by the First Amendment U.S. Constitution.

Black's Law, Copyright 1991,West Pub. Co.

The Court of Appeals continues to deny Appeal as a Right Rule 3, FRAP of new cause and new Case never before filed in the U.S. District Court No. 1:98-0026 on res judicata, dismissed on res judicata without constitutional right of jury trial for relief in damages after state holding properties for over fifteen (15) years.

This Complaint and Jury trial Demand, Non consent to Magistrate, but Petitioner has been subjected to this same District Court Magistrate this third time and Non-consent to Magistrate denied 28 U.S.C. 636(c) on July 8, 1998 (App. B.p. 24).

The Magistrate Judge's Report and Recomendation Appeal as a Right Rule 3,FRAP two (2) times at cost of two hundred ($210.00) dollars, but Court of Appeals reduced Appeal as a Right FRAP to application for permission to appeal No. 99-509, 99-512, 99-513 denied on old Buford Evans & Sons v Earlene Polyak 92-5240 filed January 11, 1993.

The Court of Appeals denies constitutional right of appeal to redress grievances provided by the First Amendment and Appeal as a Right Rule 3 FRAP and reduces appeal as an application for permission to appeal on old Buford Evans & sons v Earlene Polyak 92-5240 and denies on res judicata.

The Court of Appeals misrepresents matter of fact that Buford Evans & Sons never filed a complaint in the U.S. District Court, but after the Honorable Jim Hamilton, State Judge, denied Appeal as a Right Rule 5, TRAP, and the Court of Appeals of Tennessee denied filing a copy of Appeal as a Right, Buford Evans & Son v Earlene Polyak Circuit Court No. 10647 was removed to U.S. District Court under 28 U.S.C. 1441, 1443(1)(2) No. 1:85-0120.

Buford Evans entered upon Rena Hulen Estate without Petitioner's knowledge of permission and conducted survey for sale at public auction. He did not have a surveyor's license in Tennessee.

Petitioner believes survey was conducted

intentionally in conspiracy to draw Petitioner into Court to sell all of her property at public auction so Frank Hulen's kids could buy it, including herindividually owned farm, and Buford Evans put a lein on her property, Robert Boston put second lein upon individual property with intent to sell at public auction.

Buford Evans never filed a complaint and Petitioner's appeal of District Court's dismissal of removal was denied Rule 9(a)Docket

Law Offices of
Larry Douglas Brandon
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Mufreesboro, Tennessee 37133
(615) 890-8517

February 21, 1986

Mrs Yvonne Henderson
United States Court of Appeals
U.S. PostOffice & Courthouse
Cincinnati, Ohio 45202

Re:Case No. 85-6135
Buford evans et al
vs Earlene Polyak
District Court No.
85-0120

Dear Mrs. Henderson:

This letter will confirm our conservation of Friday February 31, 1986,where by I indicated that I have no intention in participating in the appeal of Mrs Polyak to the United States court of Appeals. Please enter this letter for the record. Thanks for your cooperation.

Sincerely,

/s/ Larry Brandon

The Court of Appeals misrepresents Buford Evans complaint in denial of Appeal as a Right FRAP in denial of constitutional right of a jury trial for relief in damages on res judicata 92-5240"enjoining any civil action in this or any other federal Court in this Circuit..., and dismissing appeal in Circuit Court No. (9)(a)Docket Control of all or pro se appeals.

The Court of Appeals is in violation of constitutional civil rights in first ten Amend ments to the Constitution and 42 U.S.C. 1981 right to sue amended to Right of "(a) party to sue in Civil Rights of 1991, and to the deprivation of rights and priveleges secured under the constitution in 1983 Acts of Congress.

The Court of Appeals dismissed on res judicata Right of Appeal Rule 3, FRAP District Court 1:98-0026 in 99-512,513,99-509to Magistrate Judge's Report and Recommendation the motion to amend Complaint to add the return of $690.00 dollars from Buford Evans owed by Frank Hulen and Wilma Lesnansky for invalid

illegal survey intended to sell property at public auction and charge Petitioner with all of the costs including taking her constitutional right to her properties without jury trial, and leins by Robert Boston.

Petitioner motioned to amend complaint to add second claim of civil rights violations against Gerald Wilson Circuit Court Clerk when she was obstructed from getting papers in Chancery Court, when Clerk took lein off her individual land, and put it on her automobile stating "I'm going to take her white cadillac."

Mr. Wilson threatened and coerced Petitioner to pay $690 dollars to keep Sheriff from putting disabled husband on crutches on street in front of Court. He had Sheriff take Petitioner to bank to get $690.00 dollars in cash, They had driven from Florida to Tennesse and this was their only transportation on March 13, 1998.

> The right to travel embraces three different components: the right to enter and leave another state; the right to be treated as welcome visitor while temporarily present in another state,...and the right to be treated like citizens of that state

Rita L. Saenz,California Director of Social Services et al.,Petitioner Brenda Doe etc., No.98-97 1/13/1999(S Ct. Syllabus).

The Court of appeals denied Appeal as a Right Rule 3, FRAP on res judicata on Magistrate Judge dismissal of Report and Recommendation on res judicata in motion to amend the Counter-claim against Dalton Mounger for filing hearing on January 30, 1998 for February 10, 1998 without due process on notification, and hearing held in violation of her constitutional right to protect her properties. Mounger is in violation of due process Fifth and Fourteenth and Legal Fiduciary duty founded on trust and confidence.Black's Law(Supra).

> Due process of law implies the right of a person affected thereby to be present before the tribunal which pronounces judgment upon life liberty and property Black (Supra).
>
> Notice by mail or other means as certain to insure actual notice is a minmun consti tutional pre condition to a proceeding which asversley affects the liberty or property interfers of any party whether unlettered or well versed. New York City v New YorkN.H. & R.Co 344 U.S. 344 at 297 73 S Ct at 301.

Although Mounger represents himself in 1: 98-0026, he misrepresents charges for his

clients with long distance telephone calls to and from a party not named as a client and charges that are obviously unrelated filed in state court. Mounger's charges are reckless.

> When attorney recklessly creates costs, the other side is entitled to relief 28 U.S.C.A. 1927 FRCP.

Petitioner has been obligated to defend this civil conspiracy to cause the unconstitutional sale of her properties without the constitutional right of a jury trial for relief in damages dismissed on res judicata in the District Court and denied Appeal as a Right Rule 3, FRAP.

> To be sure, the Court's cases have repeatedly stated that "one persons property may not be taken for benefit of another private person without justifying public purpose, even though compensation be paid Thompson v consolidated Corp.300 US 55 57 S Ct 364 3 6 81 L Ed

> Taking by state of private property of one person or corporation without owners consent for private use of another, is not due process of law and is violation of Fourteenth Amendment of constitution of the United States. Miss. v Nebraska, (1869) 164 U.S. 403 17 S Ct

> Fourteenth Amendment's protection of property does not safegurad only rights of undisputed ownership, but also

extends protection to any significant property interest, including entitlements. Feuntes v Shevin, (1972) 407 U.S. 90 92 S Ct 1983 32 L Ed 2d 566

2. THE COURT OF APPEALS SIXTH CIRCUIT DENIES APPEAL AS A RIGHT FRAP ON RES JUDICATA OF DISTRICT COURT DISMISSALS ON RES JUDICATA IN DENIAL OF JURISDICTION FOR RIGHTS AND PRIVELEGES SECURED BY U.S. CONSTITUTION

Petitioner filed new Complaint and Jury Trial Demand for relief in compensatory and punitive damages against the Courts of Tennesse holding properties for over fifteen(15) years without whole and equal enjoyment in properties in U.S. District Court No. 1:98-0026 on February 12, 1998 under federal jurisdiction.

Petitioner removed and amended 1:98-0026 under 28 U.S.C 1441 to add parties and orders 7951-96 Dismissal of Counter-claim;7951-96 Judgment on the Pleadings; CC:452-98 filed on February 10, 1998, and 7951-96 Order for Sale filed on February 11, 1998 filed in the U.S. District Court on February 17,1998to federal.

Petitioner added parties the Honorable Jim Hamilton, Circuit and Chancery Judge; Gerald Wilson,Circuit Court Clerk; Dalton

Mounger; and Geneva Frisbee, Clerk & Master in first amended complaint. She submitted a motion to amend complaint to add issues and parties, which was filed but summons not issued by Clerk. On February 10, 1998 the above parties participated in a hearing which Petitioner was not given due process of notification and was not present in violation of 28 U.S.C. 1443(1,2

This Complaint and Jury Trial demand was filed under Article III, Sec. 2Diversity of citizenship, between state and citizens of a nother state; b etween citizens of different states, supported by Act of Congress 28 U.S.C. 1332 in which federal courts have jurisdiction over state courts, 98:0026 federal jurisdiction.

> as to matters governed by U.S. Constitution and Acts of Congress...304 U.S. 46 58 S Ct 817 82 L Ed 1188.
>
> Erie Railroad v Tompkin requires federal court to give some equitable remedies in diversity case, the only qualification being that federal court have power to grant relief. Erie Railroad v Tompkin, Moores K.F. 8716.5M 661.
>
> The jurisdiction of the district court arising from diverse citizenship extends to the entire suit, and to every question state or federal in its determination. Wichita Light co. v Public Utilities Co.

Kans, 1922 43 Sp Ct 51 260U.S. 67 L Ed. 124.

> The federal District Courts have jurisdictionwhere divesity of citizenship exists over actions involving the possession of land, and the action for partion of real property" Beebe v Louisville N.O.& T.R Co.(1989) 39f 481.

> And it appears that local courts are try ing to change federal law,"the most significant of small town politics is the frequency with which the legal and procedural requirements are overlooked and ignored,so as, to take account of unique conditions, such personalized government even at local level can be as offensive as it may be intimate and effectice... Wood, Suburbia 278-80(1958).

There is new evidence of Private Property Rights Implementation Act of 1999 H.R.2372 passed by a majority of votes in U.S. legislature introduced on June 29, 1999 to be held for parties who have been deprived of rights and priveleges secured by the U.S. Constitution.

> To simplify and expite access to the Federal courts for injured parties whose rights and priveleges secured by the U.S. Constitution have been deprived by final actions of Federal Agencies,or other government officials or entities acting under the color of State Law; to prevent Federal Courts from abstaining from exercising jurisdiction...(any clain 42 U.S.C. 1983)

The Court's dismissals on res judicata deprivation of rights secured by Constitu-

tion under federal jurisdiction of 1:98-0026 Court of Appeals No.99-512,99-512, 99-513.It is stated that there fifty(50) Bills pending in the United States Legislature for relief of injured parties deprived of rights and priveleges in property secured by the Constitution to expidite access to Federal courts. BILL H.R. 2372 1st Session of 106th Congress.

3. THE COURT OF APPEALS SIXTH CIRCUIT DENIAL OF APPEAL AS A RIGHT RULE 3,FRAP ON RES JUDICATA OF DISTRICT COURT'S DISMISSALS ON ON RES JUDICATA WITHOUT CONSTITUTIONAL RIGHT OF JURY TRIAL ALLOWS FOR INTENTIONAL ARBITRARY DISCRIMINATION SECURED FOR EVERY PERSON AGAINST THE STATE IN THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND ACTS OF CONGRESS

The Court of Appeals denial of Appeal as a Right Rule 3, FRAP on resjudicata No.99-512 99-513,99-509 on old 1992 injunction of new cause and new Case 1:98-0026 on res judicata allows for intentional arbitrary discrimination against pro se litigant in the hearing held February 10, 1998, without due process of notification by counsel and State Judge secured for every person against the State in the Equal Protection Clause of the

Fourteenth Amendment, and Acts of Congress in Civil Rights Act 1964, 42 U.S.C. 1981 right to due, amended in Civil Rights ACt 1991 right of "(a)'party to sue, and 1983 subjection by use of State in discrimination under Statute Partition in Kind 29-27-117 TCA depriviation of rights and priveleges without liability or equity. Partition in Kind 29-27-117:

> If exact partition cannot be made without material injury to the parties or some one of them, the commissioners may make the partitions as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares.

Petitioner was intentionally arbitrary discriminated against when two of three State Judges divided under Partiton in Kind in 1983.

The Honorable James Weatherford didived property between grandmother and children in Wayne County, and Judge Jones divided property between sisters Phaler v Watson 80-83,but Petitioners property ordered sold at public auction at her expense without any just conpensation. Judge appointed Special Commissioner.

The advertised sale in local advocate in violation of paper of general circulation TCA

35-5-101 sale must be held open ten (10) days, but "sale will not be held open for advancement of bid, to be final on day of sale."

> ...appellant can consider the fact of insufficient advertising in connection with other facts in case to determine why land did not bring adequate price, Napier v Stone 21 Tenn. App 114 626 S.W.2d(1937 Sale of land for which mortagor paid $450 was set aside where sale was unadvertized and consideration was only $177(Supra)
>
> It is assumed that rule in Tennessee is that strict foreclosure is valid if fully supported by every condition when there is no provision for personal service and no redemption permitted. Highbee v Chadwick,22 Tenn. 873(1915).

The holding of property for fifteen (15) years conflicts with Supreme Court rulings:

> ...taking of property unconstitutionally confisticates private property without just compensation, and these basic rights of possessed interests" are set forth in Seawall v New york City 544 N.Y.s 2d 542 (Sct App. 1989).
> ... "whole and equal use of her investment and without economically viable use of her property, Situim v Tahoe Regional Planning Agency 117 S Ct 1659(1977).

There is no question of eminent domain or cause for unconstitutional sale.

> A sale for partition,where there is no evidence to show necessity,will be set aside.Bradbury v Martin 3Shannon469(1975)

The Court of Appeals of Tennessee denied relief from the confiscating of all Petitioners properties for sale at public auction without constitutional right of jury trial TRAP Rule36, and the Supreme Court denies Appeal as a Right.

> The Supreme Court, Court of appeals..shall grant relief on law and facts which the party is entitled or proceeding otherwise requires and may grant relief,including giving of any judgment and making of any law.

The Petitioner is being treated differenly from others similarly situated and there is no rational basis for the different treatment, it is irrational and wholly arbitrary as in Grace Olech.

> The purpose of the equal protection clause of the fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination,whether occasioned by express terms of a statute or its improper execution through duly constitued Agents. Village of Willowbrook et al v Grace Olech No. 98-1288 S Ct Feb. 23,2000 Per Curiam

CONCLUSION

Petitioner prays that a writ issue from this Supreme Court to review the Court of Appeals Sixth Circuit denial of Appeal as a

Right Rule 3,FRAP on res judicata of District Court dismissals on res judica without jury trial, when State Courts deny res judicata,and order the constitutional right of jury trial for relief in damages set forth in complaints before an unbiased tribunal,and set aside all orders in unjust awards to counsel. And grant Petitioner additional relief for fifteen (15) years in her defense, and any other such relief that this Court deems fair and just.

On the_____ day of _____2000.

Respectfully submitted,

Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458
(561) 743-9544
-summer-
3179 Middlefield Drive
Trenton, Michigan 48183
(734) 676-3364

I certify that the above is true to the best of my belief and knowledge.

_____

NOTARY PUBLIC
My com'n expires:

CERTIFICATE OF SERVICE

I certify that a true copy of this writ certiorari has been mailed to Mary Byrd Ferrara, Ass. Attorney General, 425 Fifth Ave. N. Nashville, Tennessee 37243, John D Swalb, Spicer Flynn Ludstrom, 211 7th Ave. N.Nashviie Tennessee 37219, and Dalton Mounger, 806A Garden St.,P.O. Box 1468, Columbia, Tennessee 38402 on the _____day of_____ 2000.

_____
EARLENE POLYAK

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 28, 2000

Ms. Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458

Re: Earlene Polyak v
Hon. Charles burson et al.
Application No. 00A270

Dear Ms. Polyak:

The application for an extension of time to file a petition for writ of certiorari in the above entitled case has been presented to Justice Stevens, who one September 28, 2000, extended the time to file to and including December 2, 2000.

This letter has been sent to those designated on the attached notification list.

Sincerely,
WILLIAM K. SUTER,Clerk
s/Ruth Jones
Ass. Clerk

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit Nos. 99-512, 99-513, 99-509.

Earlene Polyak v The Honorable Charles Burson; Frank Hulen Estate; Dora Lee Hulen; Wilma Lesnansky; The Honorable Jim Hamilton, Circuit and Chancery Judge; Jerald Wilson, Circuit Court Clerk: Dalton A. Mounger; and Geneva Frisbee, Clerk and Master; in the United States district Court, Middle District of Tennessee No. 1:98-0026.

Notice of Appeal filed:May 30, 1998 Amended 99-512,July 01, 1999, Amended 99-513 July 01, 1999 $105.00 and $105.00.

Denied : June 22, 1999.

Before:BOGGS, NORRIS, and BATCHELDER, Circuit Judges.

Denied: July 5, 2000 99-512,99-513

Before:MARTIN, Chief Judge, WELLFORD and BATCHELDER Circuit Judges.

Petition for Rehearing En Banc: Received July 18, 2000 by the Court of Appeals Sixth Cir

99-512/513

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Petitioner

v

CHARLES BURSON

Respondent

FILED SEPT 19 2000

ORDER

Before: MARTIN Chief Judge; WELLFORD and BATCHELDER, Circuit Judges

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel but also to all of the active judges of this court, and no judge of this court having requested a vote on the hearing en banc, the petition petition has been referred to the original panel.

The panel has further reviewed the petition and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases, the petition is denied.

ENTERED BY THE ORDER OF THE COURT
s/ Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Filed July 5, 2000

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183

John D.Schwalb
Spicer Flynn & Rudstrom
211 Seventh Avenue N.
Nashville, Tennessee 37219-1823

RE: 99-0512:99-0513
Polyak vs. Burson
District Court No. 98-0026

Enclosed is a copy of an order which was entered today in the above styled case.

Very Truly Yours,
Leonard Green,Clerk

s/Mary Patterson
Case Manager

Enclosure

cc:
Honorable Aleta A Trauger
Mr. Roger Milan

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
Petitioner

v

CHARLES BURSON et al.,

Respondents,

FILED JUN 05 2000

ORDER

BEFORE: MARTIN,Chief Judge; WELLFORD and BATCHELDER, Circuit Judges

Earlene Polyak applies for leave to file to this Court's order entered in Buford Evans & Sons v Polyak No. 92-5240, 1992 WL 301959 at *2(6th Cir. October 20, 1992((order).

Upon review, the applications are hereby denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Clerk

No.99-0509

UNITED STATES COURT OF APPEALS
FOR THE SIXRH CIRCUIT

EARLENE POLYAK

Plaintiff-Petitioner

FILED OCT 15 1999

v

CHARLES BRONSON et al.,

BEFORE: BOGGS, NORRIS AND BATCHELDER Circuit Judges.

Earlene Polyak has filed a petition for rehearing her application for leave to file pursuant to this Court's order in Buford Evans & Sons v Earlene Polyak No. 92-5240 WL 1992 at *(6th Cir.Oct 20, 1992(order).

Upon careful consideration this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order.

The petition for rehearing is thus denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Clerk

No. 99-0509

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Petitioner-Plaintiff

FILED JUN 22 1999

v

CHARLES W. BURSON et al.,

BEFORE: Bogg, NORRIS, and BATCHELDER, Circuit Judges.

Earlene Polyak applies for leave to file pursuant to this court order in Buford Evans & Son v Earlene Polyak No. 92-5240, 1992 (order) at * 2(6th Cir. Oct 20, 1992).

Upon review, the application is hereby denied.

ENTERED BY ORDER OF THE COURT

s/Leonard Green Clerk

In Re: EARLENE POLYAK

Petitioner

FILED MAR 5 1999

ORDER

Before SILVER, BATCHELDER and COLE

The petitioner has submitted to this court an application for leave to commence a civil action, the apparent goal of which to stay the pending partition sale of land inherited by the petitioner and her siblings. The application was denied in order on February 9, 1999. The petitioner now seeks rehearing of her application.

In 1993, this court entered an order requiring the petitioner to seek prior approval from any federal court in this circuit before filing, institution, continuing or prosecuting any civil action. The order provided strict instructions in this case .Also the 1993 order enjoined the petitioner from further litigation in federal court originating from partition sale of inherited land. Although petitioner filed asserts that recent

activity in the state courts give rise to new claims not raised in prior litigation, the subject of proposed litigation is the partition sale of land falls within this prohibition.

It is therfore ordered that the petition for rehearing in denied.

ENTERED BY ORDER OF THE COURT

s/Leonard Green ji

Clerk

No. 99-0502

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POIYAK

Petitioner

FILED FEB9 1999

ORDER

Before: SILER, BATCHELDER and COLE,Circuit Judges.

The petitioner has submitted to this Court a document styled as an "Application for leave for permission for application for stay for writ of mandamus for jury trial demand for relief in injunctive and compensatory and punitive damages. Although she fails to state the particular relief she seeks from this court or the district court to stay the pending sale of real estate included in her mother estate.

Because of the voluminous and repititious litigation filed by the petitioner in regard to state court proceedings involving her mother's estate, this court entered an order on January 11, 1993, enjoining the petitioner "from filing, instituting, continuing,or prose

cuting any civil action in this or any other federal court in this circuit without first obtaining leave of the court." This court further required the petitioner, in seeking such leave, to cerity that any claims presented by the proposed action "are new claims never be fore raised and issposed of on merits by any federal court." Among the future filings which this court specifically enjoined was "litigation originating from the partition sale of land in Tennessee inherited by Mrs Polyak and her siblings as tenants in common." The court also provided that any motion for leave to appeal to this court must be captioned "Application Pursuant to court Order Seeking leave to File" and must have attached therto a copy of the court's Januaty 11, 1993 order. A failure to strictly comply with the terms of that order the court warned would be 'grounds for summarily denying leave to file" See Buford Evans & Sons v Po yak No. 92-5240(6th Cir Jan 11, 1993) unpublished order).

The present application does not meet several of the requirements set forth in the aboveorder. in addition to the fact the application is not in the required form,the subject matter of the application appears to be prosed partition sale of the inherited Tennessee land--an issue which is expressly enjoined from further federal court litigation under the 1993 order.

It is therefore ordered that the applicationfiled by the petitioner is denied.

ENTERED BY ORDER OF THE COURT

s/Leonard Green ji
Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D C 20543

William Suter
Clerk of the Court MARCH 11 1998

Re: Mrs Earlene Polyak v Frank Hulen Estate, ora Lee hulen ans Wilma Lesnsnaky

Dear Mrs Polyak:

Your application for injunction on March 6, 1998 is herewith returned for the following reason:

For the reasons stated in my letter March 3, 1998. In addition, I checked with the Sixth Circuit and they do not have a request for an injunction pending there is no record that you have requested this relief from the lower courts. Your check in the amount of #300 is again returned.

Sincerely,
William K. Suter,Clerk
s/ Cynthia Rapp
202 479-3031

No. 97-0508

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In Re: EARLENE POLYAK

Petitioner

FILED MAR 12 1998

ORDER

Before: KRUPNANSKY, NELSON and BATCHELDER, Circuit Judges

The petitioner has submitted to the court for an injunction enjoining the sale of real estate, pursuant order of Chancery Court of Lawrence county, Tennessee scheduled for March 14, 1998. She asserts such an injunction is needed because the state courts denied a jury trial in the underlying estate proceeding for partition of property.

In the order of January 11, 1993, this court enjoined the petitioner from filing further appeal in this court unless she first filed application for leave to appeal and certified that the calim or claims to be raised were new and had never been presented or disposed of on merits by any federal court. the order expressly prohibited the petitioner

from presenting, inter alia, any claims related or arising from the partition sale of land inherited by Mrs Polyak and her siblings as tenants in common."The Petitioner filed such application for leave to appeal in this case and, in order March 10, 1998, we denied such application on grounds it did not comply with January 11, 1993 injunction. There is nothing presented in the present application for injunctive relief which would warrant reconsideration of that order or a different result.

It is therefore ordered that the application for injunction is denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green ji

Clerk

UNITED STATES COURT OF APPEALS
For the Sixth Circuit
U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202

December 9, 1999

Earlene Polyak
145 Lakeside Drive
Jupiter, Florida 33458

Dear Mrs. Polyak,

Neither the federal rules of appellate procedure nor the federal rules of local rules permit successive petitions for rehearing to be filed. National Latex Co v Sun Rubber Co.,276 F2d 167 6th Cir. 1960 Billy Frank Richard Sr. v United States, No.95-3877, 6th Cir.Aug.22 1966. having petitioned for rehearing by the original panel decision in this case, the ruling on October 15, which denied the petition terminated the case. The successive petition for rehearing will be kept only as correspondence in this case.

The other two orders are still pending whan a final decision is rendered, you have the opportunity to request the court to reconsider its decision if you disagree with the outcome.

Sincerely yours,
s/Janice E. Yates
Chief Deputy clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

January 9, 1997

Roger Milan, Clerk
Middle District of Tennessee
801 Broadway, U.S. ourthouse
Nashville, Tennessee 37203

Re: Notice of Appeal in 1:96-0112
Dora Lee Hulen v Earlene Polyak

Dear Mr: Milan:

The district clerk's office has transmitted the customary appeal packet in case to our office. Because of injunction entered by the Court of Appeal in 1993 which sets conditions on Mrs Polyak initating appeals, the clerk's office will NOT be acting on the transmittal.

In Case No.92-5240, Buford Evans & Sons v Earlene Polyak, the court enjoined Mrs Polyak from filing an appeal unless she filed and Application pursuant Court Order seeking leave to file and the Court granted application. The Injunction is broader than what I have described. I am enclosing a copy so you can read its terms. As to this attempted appeal from Judge Wiseman's order of November 5, 1996, she did not file the required application, only to motion the court of appeals for a protective order which will be returned unfiled.

A final note, Mrs Polyak did apply for premission to appeal the Magistrates underlying October 15th report and recommendation but the court denied application (a copy of order is also enclosed

enclosed). A motion for reconsideration is pending.

If you have any questions about injunction, please call me at Clerk's office.

Sincerely yours,

s/Janice E. Yates
Chief Deputy Clerk

cc: Mrs Earlene Polyak(w/enclosures)
Dalton M. Mounger

NO. 92-5240

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUFORD EVANS & SONS

FILED JAN 11 1993

Plaintiff-Appellees

v

ORDER

EARLENE POLYAK

Defendant-Appellant

BEFORE: KEITH NELSON AND RYAN,Circuit Judges

This case is before the court on Mrs. Earlene Polyak's response to show cause order issued by this court. The show cause order requested Mrs Polyak to indicate why injunction should not be entered against her to prevent her from further filing continous frivolous litigation. We have examined Mrs Polyak's response and it contains no arguments that would prevent the issuing of an injunction. Mrs. Polyak's repititous litigation makes the entry of such an injunction appropriate. See Lysiak v Comumn, 816 F 2d 311,312-13(7th Cir 1987).

Upon consideration of the court, it is hereby ordered that Mrs Polyak be enjoined from filing, insituting, continuing or

prosecuting any civil action in this or any other federal court in this Circuit without first obtainin leave of that court.

In seeking to file, Mrs Polyak hall certify that the claim or claims she wishes to present are new claims never before raised and disposed of on merits by any federal court

Such claims may not be related to or arise from the following;litigation originating from the partition sale of land in Tennessee inherited as tenant in common, objections to fees sanctions for which ordinary review has been exhausted, or claims against any state or federal judge,officer, or employees for actions taken in the course of their official duties exercised in connection with Mrs Polyak's previous litigation. She shall certify that her action is taken in good faith and that the claims she raises are not frivolous · malicious.

A motion for leave to appeal must be captioned Application Pursuant to Court Order Seeking Leave to File, and Mrs Polyak must

affix a copy of this order to the motion. Failure to comply strictly with the terms of this injunction will be grounds for summarily denying leave to file. Claims considered malicious, frivolous or brought in bad faith may be grounds for civil contempt proceedings.

The following procedures shall govern any appeals in this court filled by Earlene Polyak until such time as the court may otherwise order.

Upon timely receipt of a complete petition fof leave to appeal, the court shall direct the clerk of an appropriate lower court to transmit the full record of the underlying case. No further proceedings shall take place in this court, not shall any further filings be accepted, until this court has reviewed the petition to determine whether Polyak's appeal presents a colorable claim. This injunction applies to all appeals and other actio commenced after the date on which this order is filed.

ENTERED BY ORDER OF THE COURT
s/ Leonard Green Clerk Of The Court

UINITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Appellant

RECEIVED JUL 18 2000

LEONARD GREEN CLERK

V

No. 99-512
99-513
99-509
District Court No.
1:98-0026

THE HONORABLE CHARLES BURSON et al.,

NOTICE OF MAILING

Appellant gives notice of mailing original and fourteen copies of petition for rehearing en ban. on the 14th day of July, 2000.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(734) 676-3364

APPENDIX B

In the United States District Court, Middle District of Tennessee No. 1:98-0026.

Earlene Polyak v The Honorable Charles Burson; Frank Hulen Estate; Dora Lee Hulen and Wilma Lesnansky No. 1:98-0026.

Filed: February 12, 1998

Amended:February 17, 1998 to add orders; Lawrence Chancery No. 7951-96 Dismissal of Counterclaim; 7951-96 Judgment on the Pleadings; Circuit Court No. CC: 452-98 on February 17, 1998, and 7951-96 Order for Sale on February 11, 1998.

And Parties: The Honorable Jim Hamilton, Circuit and Chancery Judge; Jerald Wilson, Circuit court clerk ; Dalton Mounger; and Geneva Frisbee, Clerk and Master.

Dismissed: March 4, 1999 on Magistrate Judge William A Hayes Jr. Report and Recommendation December 11, 1998.($105.00).

Second Dismissal: June 9, 1999. Judge Altea A. Trauger. ($105.00).

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK

v FILED JULY 8 1998

THE HONORABLE CHARLES
BURSON et al.,

ORDER

Pending before the Court is plaintiff's objection to Magistrate and Motion to set aside order(Dkt No. 390. Plaintiff objects to this court's order of May 20, 1998, in which it referred this case to the Magistrate Judge for entry of scheduling order, for decision on all pretrial, non dispositive motions, and for reports and recommendations on all dispositive motions. See Dkt. No. 37.

Plaintiff misunderstands the Court's order. Plaintiff is correct to have a case tried by the magistrate Judge is entirely voluntary. Plaintiff is correct that she is entitiled to have case tried by Court and /or jury.

The order referring this case to the

Magistrate Judge for nondispositve,pretrial does not disturb or violate Plaintiff's constitutional rights. The merit of plaintiff's case will be tried and decided by this Court. The Magistrate Judge will merely make preliminary pretrial nondispositive decisions and enter a scheduling order for the expident conduct of the case.

Federal Law provides the the Court may designate a Magistrate Judge to hear and determine any non dispositive pretrial matter pending before the Court 28 U.S.C.(b)(1)(A). This Court may reconsider any such ruling if they can show that it is clearly erroneous to law Id. In addition, this Court will decide all nondispositive matters, such as motions to dismiss or summary judgments and this court will conduct the trial. Plaintiff's object ions are overruled.

s/Todd Campbell
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE TENNESSEE

EARLENE POLYAK

Plaintiff

v

CHARLES BURSON et al.,

FILED JUNE 9 1999

Civil No. 1:98-0026
Judge Trauger

ORDER

On April 23, 1999, Magistrate Judge Hayes issuec Report and Recommendation, recommending that counsel for defendants Frank Hulen, Dora Lee Hulen and Wilma Lesnansky be awarded $1,687.50 in attorney fees. On April 30, 1999 plaintiff filed a document entitled Second Objection and Demand Oral Argument to Dalton Mounger's Misrepresentation of Charges and Motion to Set Aside Rule 60(b) FRcivP.

To the extent that this filing constitutes objections to the Report and Recommendation, the Court overrules objections. The Report and Recommendation is hereby made the order of this court for the reasons stated therein.

It is so ORDERED.

Enter this 8th day of June 1999.

s/ALTEA A. TRAUGER
U.S. District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK

Plaintiff

FILED MARCH 4 1999

v

Civil Action 1:98-0026

THE HONORABLE CHARLES BURSON et al.,

Defendants

ORDER

Presently pending before the court is the magistrate Judge's Report and Recommendation(R&R) entered December 5, 1998(Dkt.Ent. No. 51) to which Plaintiff has filed objections (Dkt. Ent. No.55) and supplemental objections(Dkt. No. Ent. No. 60).

Pursuant to rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 302, this court is required to review the magistrate Judge's recommendation de nova Rule 72 (b) specifically states: The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or recommend the matter to the matter to the

Magistrate Judge with instructions FED.R. CIV P. 72(b).

After fully considering the record in this case, including the Magistrate Judge's Report and Recommendation and objection there to, the Court is of the opinion that the Magistrate Judge's findings and conclusions are correct and they are adopted and approved More specifically, the Court agrees that the plaintiff's lawsuit is barred by the doctrine of res judicata because the allegations and claims arise from the same cause of action and allegations as in Hulen v Earlene Polyak No. 1:96-0112 M.D Tenn.(Higgins J.) and Polyak v Hulen 1:84-0083 M.D. Tenn. (Wiseman J)which were both barred under res judicata doctrine.

Accordingly, defendants' motions to dismiss(Dkt Ent. No. 16, 22, 26, and 29) are here by granted,and defendants Hulen Estate, Hulen, Lesnansky, and Mounger's motion for sanctions (Dkt Ent. No,4) is granted as as to award attorney's fees. Defendants motions to strike plaintiff's motion for extension of time(Dkt.

Ent.Nos. 54 56) are denied as moot. Counsel for the defendants shall file fee affidavit within 20 days of entry of this order, and the Court refers awarding of fees to Magistrate Judge Haynes.

The court further orders that plaintiff shall be required to obtain leave of the court to file any future actions in light of her repeated filings despite prior court sanctions. The Clerk is hereby directed to not accept further filings despite prior order of the court. After the awarding of fees, this case will be dismissed with prejudice pursuant to FED R. Civ. 41(a)(2).

It is so ordered.

Entered this 4th day of march 1999.

s/ALTEA A TRAUGER
united States District Judge.

IN THE UNITED STATESDISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK

Plaintiff FILLED DEC 15 1998

V

THE HONORABLE CHARLES
BURSEN et al.,

REPORT AND RECOMMENDATION

1..INTRODUCTION

This civil action was referred to the Magistrate Judge by the Honorable Todd J. Campbell, District Judge, by order entered May 20, 1998(Dkt. No. 37). The Magistrate Judge was directed to enter a scheduling order, decide all pretrial, non dispositive motions, and provide reports and recommendion on all dispositive reports and recommendation on all dispositive motions.

Plaintiff Earlene Polyak filled this action under 28 U.S.C. 1332, the federal diversity statute, originally against defendant Honorable Charles Burson, former Attorney General of Tennessee(Fed. R. Civ.P 25(d),the current Attorney General John Knox Walkup,

Frank Hulen Estate, Dora lee Hulen and Wilma Lesnansky concerning the family farm inherited by Earlene Polyak, Frank Hulen and Wilma Lesnansky from their mother in 1976. In Polyak'a amended complaint(Dkt. No. 2), she adds as parties Jerald Wilson, Circuit Court clerk, Dalton Mounger, and Geneva Frisbee,Clerk and Master. Polyak served process on Jim Hamilton and the governor of Tennessee although they are not named as parties in the captions or body of the original complaint or amended action.

In her amended complaint Dkt No. 31) Polyak demands a return of $690.00 from Buford Evans, which she contends is owed by Frank Hulen and Lesnansky for an illegal survey conducted fifteen years ago Id at 175. Polyak further complains to set aside any leins on her propertyfor an award of funds for attorneys Robert Boston and Boston Bates & Holt Id at 77. Polyak also seeks a conter-claim against defendant Mounger for legal malpractice(Dkt. No. 36).

Pending before the court are several motions. The first motion to dismiss filed by the defendants, Frank Hulen Estate, Dora lee Hulen, Wilma Lesnansky, and Dalton Mounger (Dkt. No. 22) seeking dismissal of Polyak's complaint and amended complaint contending that the doctrine of res judicata bars Polyak relitigation of the allegations in her complaints. Second, the defendants Wilson and Frisbee move to dismiss for the same reason as well as alternatively moving for a more definite statement of facts as to their alleged acts or omissions (Dkt. No. 26). Third, the defendants Walkup, the Governor of Tennessee, and Jim Hamilton move to dismiss this action against them for failure to state a claim(Dkt. No. 16 and 29). Fourth, the defendants Hulen estate, Hulen, Lesnansky, and Mounger move for sanctions against the plaintiff for this frivolous filing in violation of Fed. R.Civ.P 11(Dkt. No. 41).

In response, Polyak reiterates the the defendants violated her federal rights to due

a jury trial, and equal treatment(Dkt. No.27 and 32).For reasons set forth below, the Magistrate Judge concludes that this action is barredby the res judicata doctrine in light of the plaintiff's numerous attempts to litigate the core claims in this action, in this other courts. Thus, the pending motion to dismiss should be granted as well as the motion for sanctions.

II.ANALYSIS OF THE COMPLAINTS AND MOTIONS

According to her original complaint,this action arises from state court proceedings relating to property in the estate of Rena Hulen to which the plaintiff has an interest (Dkt. No. 1 Original Complaint at 13).There is a reference to a removal of that state court action however, but there are no formal papers.

In her original complaint, Polyak allege that she never agreed to the sale or the partition ofproperty from Rena Hulen's estate Id at 28.Polyak claims that none of the defendants contributed any any labor or money

for the removalor restoration of the roof on Rena Hulen's house, which Plaintiff expended for a retirement home.Id at 15. Polyak alleges that she has been denied the power as administratrix and that defendants Frank Hulen and Wilma lesnansky failed to contributethe restoration and maintenance to the Rena Hulen estate Id at 71. Polyak asserts that she has paid over one third of expenses on the estate and that she has been denied enjoyment of her interest and partition of the estate Id Polyak further alleges that she suffers from stress and anxiety from her neumerous court appearances and personal involvement in her suits, embarrassement in defending her constitutional rights, the loss of interest and investment, and the loss of everday pleasures in life Id.

Polyak filed a Complaint and Jury Trial Demand against Wilma Lesnansky and Frank Hulen on December 28, 1995, that was dismissed by the Chancery court of Lawrence county, Tennessee on February 16, 1996(Dkt. No. 28(Mounge

The state courtdismissed the action because Polyak had already litigated the dispute about a partition order with the defendants in several courts and that the averments were substantially the same as the ones before the Chancery Court Id at Ex.B. The Chancery Court concluded that Polyak's action appeared from the record to be frivolous, in bad faith, and vexatious Id. Polyak attempted to appeal the order of the Chancery Court, but she refused to file an appeal bond, and her right to appeal expired Id at 4.

FranK Hulen died on April 11, 1996, and Dora lee hulen is executrix of his estate and sole beneficiary under his will Id at Ex.D. Dora Lee Hulen and Wilma lesnansky subsequen tly filed a complaint for Partion in the Chancery Court of Lawrence County, Tennessee on May 10, 1996 to obtain an accessible and understandable order of partition of the farm. Id. On June 7, 1996 Polyak filed an Answer to Complaint,counter-claim and Jury Trial Demand in chancery Court and in this Court Id at E.

This Court construed the pleading as a notice of removal under 28 U.S.C. 1441 and filed the pleadings as Case No. 1:96-0112. Polyak's claims in her Answer, complaint, counter-claim, and her claim for a just trial demand were ultimately dismissed by the Honorable Judge thomas Higgins by order entered on November 5, 1996.Hulen v Polyak No. 1:96-0112 (Dkt. No. 14). Judge Higgins order found that the action was barred by doctrine of res judicata.Polyak appealed Judge Higgin's order to the United States Court of appeals for the Sixth Circuit, but her appeal was denied.

During the pendency of federal proceeding on June 19, 1996; Dora lee Hulen and Wilma Les nansky filed a motion to dismiss the counter-claim and a motion for a judgment on the pleadings in the action for partition on January 30, 1998, mptions were aet for hearing for February Id at F. A copy of thenotice of hearing was sent to the address that Polyak used in filing that she made with the United States Court of appeals for the Eleventh

Circuit on December 18, 1997, and in filing with the Court of Appeals of Tennessee, Middle Tennessee on January 16, 1998 Id.On February 10, 1998, the Chancery court of Lawrence, Tennessee dismissed Polyak's Counter-claim,granted Judgment on the Pleadings, and ordered the family farm sold in a partition sale.

Defendants note that Polyak has had litigation pending in six different courts on the same claims that have already been decided in several courts including, the United States Court of Appeals Sixth Circuit. The defendants further contend that the doctrine of former suit pending applies because there are several suits concering the same issues pending, which prevent this Court from having jurisdiction in this case. Id at 18. Also, the defendants contend that Polyak fails to state any comprehensive claim for relief which can be granted Id at 19.

For the other defendants, Jerald Wilson and Geneva Frisbee rely upon the motion to

dismiss and exhibits attached thereto by the defendants,Frank Hulen Estate, Dora Lee Hulen Wilma Lesnansky and Dalton Mounger. See Docket Entry 22.Defendant Walkup,Attorney General of Tennessee, notes that only mention of him is in paragraph 59 of the Original complaint(Dkt No. 1) where Polyak states that she mailed a copy of a document dated january 27, 1998 to former Attorney General Charles Burson(Dkt. No. 17 at pp 1-2). Defendant Walkup asserts that there is no other mention of the Attorney General in the original complaint or amended complaint. Id at p. 2. Similar , the Governor of Tennessee and Judge Hamilton also asserts the judicial immunity doctrine as well as the doctrine of res judicata Id at pp.2-6. Polyak previously sued Judge Hamilton about the partition of this property and upon appeal to the Sixth Circuit, the Court entered an order dismissin the action on November 29, 1989, refusing t to reopen the litigation against Judge Hamilton Id at pp. 4-5 Attachment therto orde

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The Magistrate Judge finds that the allegations and claim in this action are derived from the claims and allegations in Hulen v Earlene Polyak, No. 1:96-0112. In that case, the Honorable Thomas Higgins referred plaintiff's motion to dismiss the Magistrate Judge to prepare proposed findings of fact and recommendation for disposition Id at Docket Entry No. 5. The Magistrate Judge found the following facts:

> Plaintiff's Dora lee Hulen ("Hulen") and Wilma Lesnansky ("lesnansky"). origifiled this declaratory judgment action in the Chancery Court of Lawrence County against the defendant Earlene Polyak ("polyak") a resident and citizen of Trenton, Michigan(Dkt Entry No. lattached thereto). Plaintiff seeks a declaration on their rights to have a petition of real property consisting of 42.5 acres, a house and barn in Lawrence County,Tenn-Id. This property was part of the estate of Frank Hulen(sic Earlene R. Hulen and Rena Hulen, Frank Hulen's parents).The plaintiff's seek a declaration of their right tp petition and sell this property with the proceeds therefrom to be distributed among the plaintiffs and the defendant equally.
>
> In response to plaintiff's complaint Polyak filed and answer and counterclaim in this court,attaching therto a copy of plaintiff's complaint in state court action. This court treated the defendant

paper as a removal petition under 28 U.S. C, 1441.

In the answer part of her pleading, Polyak alleges deprivation of her rights under the Fifth, Seventh and Fourteenth Amendments(Dkt. No 1 at p.2), and asserts claims under 28 U.S.C. 2043, but statute relates the the handling of funds by a District Court clerk. In addition to her federal claims for fraud and misrepresentation by the plaintiff'scounsel who is not a party. For relief Polyak seeks damages and injunctive relief.

As to factual allegations, Polyak alleges that on December 28,1995, she filed a complaint that was dismissed and Clerk and Masterof the Court allegedly denied Polyak a appeal. Ld at p. 3.According to Polyak's answer however, there were tow unsuccessful appeals, one of which involved an unappealable order Id. According to the allegations in her answer partitions and sales of the property were attempted in 1981 04 1983, and between November 1987, September 21, 1988.Id.

In the section of Polyak's pleading in this action containg her counterclaim these claims af for the"denial of constitutional right and interest under Tennessee Statute 27-29-117 Partition in Kind Counter-Plaintiff contends that any order divesting her constitutional right and interest in whole and equal right to enjoyment of Rena Hulen Estate be set asidepursuant to Fed. R. Civ P 60(b).(Dkt No 1). Attached thereto, Answer, Counter claim and Jury Trial Demand at p.3). In addition Polyak alleges a denial of her right to a jury trial by the State Court and appeal an appeal in earlier court proceeding by the state court clerk.Id at

p.4.For her denial of a jury claim,the State Court allegedly ruled against Polyak had another action pending before a jury or that was tried before a jury.Id The dates of these state court proceeding is alleged to be 1974 or 1981.Id atp.4. Polyak's denial of appeal charge refers to a dismissal of her appeal in state court without prejudice because state court trial courtorder Polyak challenged on appeal was unappealable.Id at p. 4.9 Polyak also challenges the transfer of federal tobacco allotment from this property without notice to her.Id.

In their pending motion to dismiss the plaintiffs argue that Polyak's counterclaim in this action is barred by doctrine of res judicata in light of prior adjudications of Polyak's right and legal interests in this property by the United States Courts of Appeals for the Sixth circuit and the State Court Plaintiff argue that the state courts have also determined Polyak's rights at issue here, but that Polyak has repeatedly Litigated these claims despite prior court rulings against her. Due to the confusion caused by polyak's vexatious conduct the in the courts, plaintiff's filed this declaratory judgment action to clarify the state court record.

In the prior federal action cited by the plaintiff's, the Sixth Circuit entertained nine (9) actions filed by Polyak in this District, contesting the partition and sale of the property inherited from parties parents(Dkt. No. 3 Ex D).The Sixth Circuit noted that failing to prevail in state court litigation, Ms. Polyak began her assult on the petition sale in federal court1985. Id at p. 2. The parties in the Sixth Circuit action included the plaintif Lesnansky here and Polyak's brother Frank

Frank Hulen 1884 Id at p.2. The parties in the Sixth court included Lesnansky,and her brother Frank Hulen. The court of of Appeals Concluded:

Additionally,a review of the long history of Mrs Polyak's litigation reveals that she is, once again seeking t relitigate the partition sale of her family's farm. although she is calaiming the unconstitutional deprivation of a paroperty interest, her claim in nothing more than a recycled argument that could have been raised in 1976 during the property's partition. The same deprivation of tobaccoallotment'argument has been argued on appeal at least four times, and sanctions against Mrs Polyak wewe inposed against Mrs Polyak Case No. 89-5496 and 5655/5656/5657, which asserted that her numerous cases be reopened on the basis of "new evidence."

Id at p.3. The Report and Recommendation concluded that action was barred under res judicata doctrine. Accord Polyak v Hulen, 1:84-0083 Tenn Order filed December 3 1984 (Wiseman).

CONCLUSIONS OF LAW

For principles of law, the magistrate

Judge adopts his discussion of res judica

his discussuion in Hulen

In actions under federal law, the judical doctrined of res judicata and collateral watoppel have long been invoked to bar an action that is based upon legal claims and/or facts asserted in prior action.The res judicata doctrine bars parties vrom litigating issues that were or could have been raised in that

action Allen v McCurry 449 U.S. 90 94 101 S Ct411 66 L Ed 308(1980). Under the collateral estopeel doctrine, "once a court has decided an issue of fact or law necessary to its judgment, the decision may preclude relitigation of an issue on a different cause of action involving a party to the first case.Id at 94(citing Montana v United States;440 U.S. 147, 1 99 S Ct 970, 59 L Ed 210(1979). Federal law on res judicata and collateral Estoppelobtains if the prior action involves a federal claim See Allen 449 U.S at 94

In the City of Canton Ohio v Maynard

766 F 2d 236 238(6th Cir 1985), the court of Appeals explained generally, there wer two branches of res judicata doctrine. a general proposition of law there were two branches of res judicata, claim preclusion and issue preclusion. Under the claim preclusion branch an earlier final judgment on merits precludes a party raising an issue in new litigation that should have been advanced in an earlier proceedings. Under the issue preclusion branch,"parties are precluded from reliti gating an issue of law or fact which nec essarily decided a previous final judgment(emphasis added and citations omitted Accord Childs v Trippett 56 P3d 64,1995 WL 299042(6th Cir 1995).unpublished Child had previously filed suit against Wallace Finl y and Roach 1992 rasing the same issuepresented in this case. Childs claim as to these defendants are barred by the doctrint of claim preclusion.

The absence of identical parties does not avoid the preclusive effects of res judicata doctrine. Smith's issues relating to his parole revocation were properly were properly revoked under the doctrine of res judicata.Smith had a fair

opportunity to fully litigate his parole revocation claims in a mandamus/habeas corpus action brought before the Ohio Court of Appeal Tenth appellate District ... Smith argues that claim preclusion does not apply in this case because defendants in the state action differed from the defendants in the instant case.However both Caopts (as Director) and Flannery (as parole officer) are privies of the OAPA and thus satisfy the requirements of res judicata.

Smith v Capots, 78 F 3d 585, 1996 WL9932 (6th Cir. 1996).

All th..es claims appear to have been asserted in Polyak's 1985 federal action and subsquent appeal, or could have been asserted in the several actions culminated in her Sixth CircuitCircuit appeal quotated above. Polyak claims in her counter claim in this action include events occuring in 1981, 1983, and 1987 court proceedings. The alleged partition ans alleged federal tobacco allotment claim were clearly presented and determined in that appeal From the pendency of this action in state courts, there remains the prospect of appeals.

Given the nature of Polyak's counterclaim and the allegations in her pleadings, the Magistrate Judge concludes that the Court should adopt the above quotated rationale of the Sixth Circuit court of Appeals that the doctrine of res judicata bars Polyak additional attempt to determine matters previouslyadverse to her state and federal courts. Polyak's claims in this action fall under the claim preclusion branch of res judicata doctrine and this action should be remanded back to the State Courts.

> For these rasons, the Magistrate Judge recommends that Plaintiff's asserted federal claims be dismissed with prejudic and that plaintiff's motion to remandto the state court be granted...

Hulen et al , v Polyak. 1:96-0112 Docket Entry No. 10 Report and Recommendation at pp.4-6. Judge higgins adopted that Report and Recommendation and dismissed that action with prejudice. Id at Docket Entry No. 14 Order entered November 4, 1996.

The Magistrate Judge concludes that this action is yet another attempt by Earlene Polyak Polyak to relitigate the same issues. The Magistrate Judge concludes that Polyak's claim in this action are barred by the doctrineoof res judicata and should be dismissed The Magistrate Judge concludes as did Judge Wiseman, that Polyak's repeated filings o these claims violates F.R.Civ.P.11 and warrants and award of attorney fees. Polyak v Hulen 1:84-0083 M.D. Tenn. Memorandum at pp. 1-2(Wiseman DJ). This award shall be in accordance Local rule 13, if this Recommendation is adopted. The Magistrate Judge also con-

cludes that any costs incurred in this action should be imposed upon the plaintiff,Sales v Marshall 873 F 2d 115,120(6th Cir 1989), and that Polyak should be required to obtain leave of the Court to file any future actions Filipas v Lemons.835 F 2d 1145 1146(6th Cir. 1987). In Light of Polyak's repeated filings despite prior court sanctions, this form of injunctive relief is necessary.

IV.RECOMMENDATIONS

For the reasons stated above, the Magistrate Judge recommends that the defendants' motions to dismiss(Dkt Entry Nos 16, 22, 26,and 29) be granted and that Mounger's motions for sanctions(Dkt Entry 41) be granted so as to award them their attorney's fees in accordance with Local Rule 13. Tne Magistrate Judge further recommends that cost be assesed against the plaintiff and that the clerk be directed not to accept for filing any papers presented to the clerk without prior Order of the Court. Under Rule 72(b) of the Federal Rules of Civil Procedure,any

any partyhas ten (10) days from the receipt this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any Party opposing saidobjections shall have ten(10) days from the receipt of any objections file any responses to said objections. Failure to file objections within ten (10) days of receipt of the Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v Arm, 474 U.S. 140 106 S Ct 466 88 L Ed 2d 435(1985) reh'g denied 474 U.S. 1111 (1986).

Entered this the 11th day of December, 1998.

s/ William J Hayes Jr.
United States magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

Plaintiff

FILED MAR 13 1998

v

No. 1:98-0026
Judge Campbell

THE HONORABLE CHARLES BURSON et al.,

ORDER

On March 14, 1998, a court ordered auction will be held in Lawrence County to dispose of the estate of Rena Hulen, the plaintiff's deceased mother. The plaintiff has filed an application March 6, 1998(Dkt.Entry No. 5) for an injunction to stay auction.

In exercising its discretion to grant a temporary injunction, a district court must weigh (1) whether the plaintiff has shown a strong or substantial liklihood of success on merits (2) whether the plaintiff has shown irreparable injury, (3) whether the public interest would be served by the issuance of a preliminary injunction. Friendship Material Inc. vMichigan Brick Inc. 679 F 2d 100 102

(6th Cir. 1982).

The plaintiff has made no strong or substatnial showing that she will prevail on the merits. Nor has she demomstrated that injunction needed to prevent irreparable harm. The auction may result in a financial loss to the plaintiff. This loss may later be recovered as damages should she be successful on merits.

In any event, a preliminary injunction can not issue without notice to all adverse parties Rule 65(a)(1) Fed. R. Civ. P. The certificate of service accompanying the plaintiff's application indicates that only two of the six defendants were served with a copy of this pleading. The plaintiff's application for a stay of the auction lackes merit and is hereby denied.

It is so ordered.

s/Todd Campbell
United States District judge

APPENDIX C

In the Chancery and Circuit Court of Lawrence County, Tennessee.

Dora Lee Hulen and Wilma Lesnansky v Earlene Polyak Chancery No. 7951-96.

Dismissed: February 10, 1998; 7951-96 Dismissal of Counterclaim; 7951-96 Judgment on the Pleadings; Dismissed Circuit Court No.CC: 452-98(Probate No. 10496).7951-96 Order for Sale February 11, 1998.

Judge: The Honorable Jim Hamilton.

In the Court of Appeals of Tennessee No. 01A-98-CH-00133(7951-96 consolidated with 7736-95)(No. M1998 -00146-SC-R11-CV).

Reversed and Remanded:April 30, 1999.

Before: Hon. Ben Cantrell, Presiding Judge and William C. Kotch and Patricia J. Cotterll Judges.

Denied: Tennessee Supreme Court Appeal September 13, 1999, and Petition for Rehearing on November 9, 1999.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK

FILED NOV 29 1999

v

No. M1998-0046-SC-R11-CV

DORA LEE HULEN AND WILMA LESNANSKY

Lawrence County Appeal No. 01A01-9803-CH-00133

Lawrence county Nos. 7951-96 and 7736-95

ORDER

The plaintiff, Earlene Polyak has filed a petition to rehear her application for permission to appeal, which this court denied on September 13, 1999. Upon reconsideration of the application for permission to appeal and the entire record in this cause, the Court concludes that the petition to rehear be and is hereby denied.

PER CURIAM

SUPREME COURT OF THE STATE OF TENNESSEE

EARLENE POLYAK FILED FEB 3 1999

Plaintiff/Appellant

v

Appeal No.
010A-9803-CH-00133

ESTATE OF FRANK HULEN,
DORA LEE HULEN AND WILMA
LESNANSKY
Defendant/Appellees

ORDER

Plaintiff/Appellant Earlene Polyak filed a petition for rehearing petition for extra-ordinary writ to correct the record in the court of appeals and stay to set aside third sale for constitutional right to jury trial and chance of venue. After du consideration it is the opinion of the court that the petition should be denied.

Therefore, it is hereby ordered that the petition for extraordinary writ to correct the record in court of appeals and stay to set aside Third sale for consitutional right o a jury trial and change of venue is denied.

FOR THE COURT
S/Justice Frank Erowata

COURT OF APPEALS 615/741/2681
401 7th Avenue North, Room 100
SUPREME COURT BUILDING
NASHVILLE, TENNESSEE 37219-1407

POLYAK, EARLENE
145 Lakeside Drive
Jupiter, Florida 33458

EARLENE POLYAK V DORA LEE HULEN & WILMA LESNANSKY CASE NO. 01A01-9803-CH-00133

NOTICE
PLEASE TAKE NOTICE OF FOLLOWING ACTION

FILE DATE 10/5/99
PETITION FOR WRIT OF MANDAMUS FOR RECUSAL FILED ON BEHALF OF PETITIONER, EARLENE POLYAK

CECIL CRAWSON JR CLERK
COURT OF APPEALS 615/741/2681

CC:
POLYAK, EARLENE DALTON MOUNGER

IN THE CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE, AT LAWRENCEBURG

DORA LEE HULEN AND
WILMA LESNANSKY

FILED BEB 10 1998

Plaintiffs

V

No. 975-96

EARLENE POLYAK
Defendant

ORDER DISMISSING COUNTERCLAIM

This cause came on to for hearing upon the motion to dismiss the Defendant's counter-claim for failure to state a caim upon which relief can be granted, and the court finds that said counterclaim should be dismissed for failure to state a claim upon which relief can be granted.

It is therefore ordered that Defendant's counterclaim is dismissed with prejudice.

Dated this 10th day of February, 1998
s/Jim T. Hamilton

APPROVED FOR ENTRY:
s/Dalton M. Mounger
attotney for Plaintiff

I Dalton Mounger certify that on the 10th day of February, 1998, a copy of the foregoing was mailed to Earlene Polyak, 3179 Middlefield Drive, Trenton, Michigan .

IN THE CHANCERY COURT OF LAWRENCE COUNTY,
TENNESSEE, AT LAWRENCEBURG

DORA LEE HULEN AND
WILMA LESNANSKY
v

FILED FEB 10 1998
No. 7951-96

EARLENE POLYAK
Defendant

JUDGMENT ON THE PLEADINGS

Thei cause came on for hearing upon the motion of the plaintiffs,and the court finds the Defendant has asserted no viable defense to the complaint. Therefore, judgment is rendered in favor of the plaintiffs, and the clerk and Master is appointed Special Commissioner to sell the property discribed in the complaint .

Dated the 10th day of Feb. 1998
s/Jim T. Hamilton

APPROVED FOR ENTRY:
s/Dalton m. Mounger
Attorney for Plaintiffs

I dalton Mounger certify that on the 10th day of February, 1998 mailed a copy of foregoing to Earlene Polyak, 3179 Middlefield Drive Tretnon, Michigan 48183

s/Dalton Mounger

IN THE CHANCERY COURT OF LAWRENCE COUNTY,
TENNESSEE AT LAWRENCEBURG

DORA LEE HULEN AND
WILMA LESNANSKY

Plaintiffs

v

EARLENE POLYAL
Defendant

FILED BER 11,1998

No. 7951-96

ORDER FOR SALE

The clerk and master is ordered to sell the land described in the complaint at public auctionpursuant to the provision of Tennessee Code Annonated 35-5-101 et seq., the clerk and master is specifically authorized to secure the services of an auctioneer licesned in this state to conduct such public sale; and the expenses of the sale and the auctioneer shall be paid from the proceeds of the sale.

Dated this 11th day of February, 1998
s/Jim T. Hamilton

APPROVED FOR ENTRY:
s/Dalton M. Mounger
Attorney for Plaintiffs

I Dalton Mounger certify that on the 11th day of February, 1998 mailed a copy of the fore going to Earlene Polyak 3179 Middlefield Drive TRenton, Michigan 48183.

IN THE CHANCERY COURT OF LAWRENCE COUNTY, TN

DORA LEE HULEN AND
WILMA LESNANSKY

FILED FEB 10 1998

Petitioners

Civil Action 7951-96

v

EARLENE POLYAK /

ORDER

Upon motion of the Clerk and Master,as Special commissioner to set terms of sale of property in this cause, it appears to the Court that the auction sale be conducted on the premises and that the sale be a final sale and that bid not be held open for ten (10) days.

It is therefore ordered, adjudicated and decreed that the highest bid received for the property being sold in this cause will be final bid and that the bid not be held open for ten (10) days.

Said final bid will subject be subject to confirmation of sale by chancery Court.

This the 10th day of February, 1998

s/ Jim T. Hamilton

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE AT LAWRENCEBURG

IN THE MATTER OF: FILED FEB 10 1998

THE ESTATE OF FRANK HULEN DECEASED

ORDER

This cause came on for hearing upon the claim against the Estate of Frank Hulen filed by Earlene Polyak: the exceptions by the Executrix to claim: the response to exceptions by Mrs Earlene Polyak; and Mrs Polyak's demand for a jury trial. Based upon the pleadings, the argument of counsel and the entire record as a whole, the court finds as follows:

1. Mrs Polyak did not comply with the requirements of Tennessee Code Annonated 30-2-313(d) in her jury trial demand since it was not filed until more that five days after her receipt of notice of filing of the Executrex's exceptions.

2. A significant portion of Mrs Polyak's claim is barred by the doctrine of res judicata in that has already litigated these

issue s with Frank Hulen as evidenced by the Court's order on case No. 7736-95 in Chancery Court of Lawrence County, Tennessee.

It is therefore ordered adjudicated and decreed that Mrs Polyak's demand for a jury trial is dismissed and Mrs Polyak's claim is dismissed.

Dated this 10th day of Feb. 1998.

s/ Jim T. Hamilton

APPROVED FOR ENTRY :
s/Dalton Mounger

KENNETH WEATHERS
Lawrence County Clerk
Lawrence county Courthouse
Lawrenceburg, Tennessee38464

No. 10497
January 29, 1998

PLEASE TAKE NOTICE
IN RE: THE ESTATE OF FRANK HULEN

This 29th day of January, 1998, Kenneth Weathers Clerk of the Porbate Court of Lawrence County, certify that Claim , Exception to Claim and Response and Request for hearing in regards to Frank Hulen Estate has been transferred to the Circuit court of Lawrence County.

s. Kenneth Weathers
Probate Court Clerk

s/ Gearld Wilson, Clerk

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK

Plaintiff/Appellee FILED APR 30 1999

v

Appeal No.
01A01-9803-CH- 00133

DORA LEE HULEN and
WILMA LESNANSKY

Lawrence Chancery
No. 7951-96 and 7736-95

Defendant/Appellees

JUDGMENT

This cause came on to be heard upon the record on appeal from the Chancery Court of lawrence County, briefs and argument of counsel;upon condiseration wherefor,this Court is of the opinion that in the judgment of the trial court there is reversible error.

In accordance with the opinion of the Court filed herin, it is , ordered and adjudged by this court that the order is reversed. The cause is remanded to the Chancery Court of Lawrence County for further proceedings in accordance with the opinion filed herein and for collection of the costs accrued below.

We have searched the records of this court for evidence on which we could base a decision, but we have only found evidence that Mrs Polyak attempted to appeal a 1983 decision and the appeal was dismissed for lack of final judgment. Therefore, on the basis of what we have before us, we cannot sustain a judgment on the pleadings or dismissal for failure to state a claim. On remand the appellees may be able to establish a record showing they are entitled to relief sought.

The judgments entered in the two cases from lower court are reversed and the causes remanded to the Chancery Court of Lawrence county for further proceedings. Tax costs on appeal to the appellees.

s/ Ben H. Cantrell
Presiding Judge M.S.

CONCUR:

s/ William C Koch Jr. Judge

s/ Patricia J. Cottrell, Judge

OPINION

This family dispute over partition of a forty-two acre farm in Lawrence County is well into its third decade. The Chancery Court of Lawrence County granted judgment on the pleadings and ordered the property sold for partition..We reverse and remand for further proceedings.

1.

Rena Hulen, the owner of the farm died in 1976. She left her property in equal shares to her three children, Earlene Polyak, Frank Hulen and Wilma Lesnansky. The farm contained a small house and a barn.

In 1983, Mr. Hulen and Ms Lesnansky filed a complaint in DCancery Court of Lawrence County asking that the farm be sold for partition. Ms. Polyak's defense has always been that the parties orally agreed to partition the property so that she would get the house and approximately ten acres on the front, Ms Lesnansky would get a site for her son to build a house to the north of the farmhouse,

and Mr. Hulen would get some property on the back next tohis farm. Apparently, Ms. Polyak lost that battle(the order from the case is not in the record),and she set out on a journey through the federal courts, seeking to enjoin the sale of the property and to recover damages for a host of civil rights violations.

This case and eight others presently before the Court(92-6345/6525; 6526/6527 6529; had their origin in 1976 when Ms. Polyak and her two siblings inherited from their mother a family farm in Lawrence County, Tennessee, as tenants in common. Mrs Polyak's siblings sought and obtained a partition sale of the property Mrs Polyak objected to the manner in which the farm was divided and began protracted state court proceedings.

Failling to prevail in state court litigation, Mrs Polyak began her assult on the partition sale in federal court in 1995. She sought monetary damages and an order setting aside the partition sale. The defendants in this case are Mrs Polyak's brother, Frank Hulen, and her sister Wilma Lesnansky. The defendants have long ago stopped filing briefs in response.

Mrs Polyak is appealing from an order entered entered by the district court on October 6, 1972, in which the court held that it would not consider any further submissions by Mrs Polyak to relitigate any issue regarding the parties or the property involved in the partition sale.

In December of 1995 Ms.Polyak filed a complaint against Ms. Lesnansky and Mr. Hulen. The basis for the complaint was the settlement by agreement of the parties in 1976. The complaint went on te describe expenses Ms. Polyak had incurred in working on the house, how her appeal of the order of sale was inadvertently lost, how tobacco allotment was transferred to another (unspecified)farm, and how the whole ordeal had caused her stress, anxiety, and embarrassement. She prayed for $250,000 in compensatory damages, $250,000 in punitive damages, and deed to the house and ten acres.

In February 1996, Mr. Hulen and Ms Lesnansky, acting pro se, moved to dismiss the complaint under Rule 12.06 Tenn R. Civ P. for failure to state a claim. The Court entered an order on February 21, 1996, containing the following findings.

> It appears to the Court that the plaintiff will pursue any means to relitigate the previous and related issues that were involved or which arose out of the same transactions and occurances

that were involved in the same transaction and occurances were already involved in lawsuits already adjudicated in this Court, including, in this instance attempting to bring in as defendants the plaintiffs in the original lawsuit in which the plaintiff herein Earlene POlyak was a defendant. That lawsuit was filed in Chancery Court of Lawrence County, Tennessee, bearing action No. 1974. The Court takes judicial from the public record that plaintiff Earlene polyak Earlene Polyak, has already litigated this dispute with defendants with the derendants named herein, in this and several courts, and the averments appear to be largely the same as in this particular case. The original case was appealed to the Tennessee Court of Appeal and to the Tennessee Supreme Court. As mentioned the dispute has also been filed by plaintiff in numerous courts across the United States of America and has even been pursued to the United States Supreme Court. It appears from the record, the judicial notice of prior matters of public recordand defendants motion that plaintiff action is frivolous, filed in bad faith vexatious and otherwise should be dismissed, fails to state a claim upon which relief can be granted and is barred.

The Court therefore on defendants motion and also sua sponte, dismisses this lawsuit filed by the plaintiff Earlene Polyak against defendants Frank Hulen and Wilma Lesnansky. Court costs to be taxed to the plaintiff.

In May 1996 Ms Lesnansky and Dora Lee Hulen filed a complaint in the Chancery court of lawrence County seekin

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a sale of the rarm for partition. The complaint alleged that Frank Hulen died on April 11, 1996, and Dora Lee Hulen was the sole beneficiary under his will.

Mrs Polyak filed an answer and counterclaim containing the same allegations she pressed in the complaint just recently dismissed. She then filed a notice of removal in the Columbia Division of the United States District court. The district court remanded the state claims to the chancery court after dismissing the federal claims in the counterclaim.

In the meantime, Ms. Hulen and Ms. Lesnansky had moved to dismiss the counterclaim for failing to state a claim on which relief could be granted. They also moved for judgment on the pleadings. On February 10, 1998 the Chancellor entered an order dismissing the counterclaim and another order granting judgment on the pleadings. The next day the Chancellor entered an order ordering the clerk and master to sell the property described in

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the complaint.

The two cases have been consolidated on appeal. Both cases were disposed on motions to dismiss, either for failure to state a claim under Rule 12.02(6) Tenn. R. Civ P. or for judgment on pleadings under Rule 12.03 .Our problem stems from the fact that the chancellor sustained both motions on the grounds of res judicata, but the record on appeal does not containthe support for that ruling, in fact, the defense if res judicata has not been raised in either proceeding.

As we said in Gregory v Gregory, 803 S.W. 2d 242(Tenn. App. 1990) the defense must be pled and the party raising the defense must prove it. To carry that burden, the party raising the defense must generally put in evidence the record or a copy of of the record in the former case... If the record does not conclusively show that a particular matter was determined in a former proceeding, the party relying on res judicata as a defense must supplememt the record by other proof.

Costs of this appeal are taxed against Dora Lee Hulen and Wilma Lesnansky, for which execution may issue if necessary.

s/Ben H. Cantrell
Presiding Judge

s/ William c. Kotch Jr.
Judge

s/ Patricia J. Cotterall
Judge